IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.527 OF 2006
IN
SUIT NO.3331 OF 2004

Martha Anthony Colaso and Anr. ..Plaintiffs

Vs.

Ivy D'Silva & Ors. ..Defendants

Ms.S.B.Telgote i/b A.S.Ramesan for Plaintiff

CORAM: S.A.BOBDE,J.
DATE : FEBRUARY 06, 2007

P.C.

1. In this suit for partition, the plaintiffs have taken out this Notice of Motion for interim reliefs by way of injunction and for directions to the defendants to disclose the details of the property. The plaintiffs 1 and 2 are the children of Sebastian Simon D'Souza from his first wife. The defendants appear to be the widow and the sons of Alex D'Silva. Alex D'Silva is the son from the second wife of Sebastian Simon D'Souza. He is the plaintiffs' step brother. It appears that the late Sebastian Simon D'Silva was the sole owner of immovable property with structures and chawls

thereon known as "S.S.D'Silva chawl". After the death of Sebastian Simon D'Silva, the property was transferred in the name of Mrs. Delly, the mother of the plaintiffs and his wife. Mrs.Delly died intestate on 16.10.1994 leaving behind the plaintiffs and their step brother said Alex J. D'Silva (since deceased). According to the plaintiffs, Alex J. D'Silva tried to obtain their signatures on some affidavits and some powers of attorney in his favour with a view to deprive the plaintiffs of their rights in their property. They did not put their signatures since they were advised against it. The plaintiffs claim that they tried to settle the matter amicably with the defendants but that was not possible.

2. Having regard to the relationship, plaintiffs called upon the defendants by a legal notice dated 8.10.2002 to disclose the various amounts being paid by the occupants and tenants in respect of the suit property which was being paid to deceased Alex J.D'Silva. They also called upon the defendants not to create any third party interest. Instead of positively responding, the defendants appeared to have threatened the tenants and occupants not to

have any contact with the plaintiffs.

3. Having regard to the relationship of the parties referred to above and the allegations in the plaint which are uncontroverted, it is necessary in the interest of justice to grant an injunction in terms of prayer clauses (a) and (b) which read as follows:

. "(a) that pending the hearing and final disposal of suit, the defendant Nos.1,2,3 and 4 their agents and servants or anybody acting on their behalf, be restrained temporarily by an order injunction of this Hon'ble Court from parting with possession, dealing or disposing of suit property in any manner whatsoever, creating any charges/mortgage lien on the suit property creating any third party interest in or upon the suit property i.e. all the pieces or parcels of lands, hereditaments and premises with structures, passages together with chawls (known as S.S.D'Silva Chawl), lying in being at village Kirol Vidya Vihar Taluka Kurla in the Registration District and sub District of Greater Mumbai bearing Survey

No. 341 and 341/1 to 341/11.

. (b) That the Defendants Nos. 1,2, 3 and 4 be ordered and directed to disclose to this Honourable Court the details of any encumbrance already created in respect of suit property i.e. all the pieces or parcels of lands, hereditaments and premises with structures, passages together with chawls (known as S.S.D'Silva chawl), lying in being at village Kirol Vidya Vihar Taluka Kurla in the Registration District and sub District of Greater Mumbai bearing Survey No. 341 and 341/1 to 341/11."

. Order accordingly.

[S.A.BOBDE, J.]